

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

GLADYS ROBINSON, INDIVIDUALLY
AND ON BEHALF OF THE ESTATE
OF BETTY BATTLE, DECEASED ET AL

vs.

MARINER HEALTH OF SOUTHWEST
HOUSTON ET AL

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Civil Action No. 4:12-cv-1456
(Jury)

PLAINTIFFS GLADYS ROBINS' ET AL'S NOTICE OF APPEAL

TO THE HONORABLE JUDGE OF SAID COURT:

Subject to **PLAINTIFF GLADY ROBINS' MOTION FOR RECONSIDERATION** [Dkt. #40] and
FIRST AMENDED COMPLAINT [Dkt. #41],¹ Plaintiffs Gladys Robins, Robert Charles Robin, Sandra
Jean McGowan, Lucille Marie Brown and Dexter Leon Battle hereby give notice that they appeal

¹ Plaintiffs believe these two documents [Dkt. #40 & #41] toll Plaintiffs' deadline for filing a notice of appeal. However, the rules of procedure can be full of traps. Therefore, out of an abundance of caution, Plaintiff is filing this notion of appeal and is not intending to waive any rights by filing it. At the very least, Plaintiff is entitled to an order that properly disposes of all parties. To date, no such order exists: the Mariner 12(b)(6) motion [Dkt. #21] is still pending.

As to the tolling effect, the relief requested by these pending documents [Dkt. #40 & #41] should be fairly considered as a motion for new trial, motion to alter or amend the judgment, motion for relief from judgment, motion to correct clerical error in judgment and motion for leave to file amended complaint (if necessary). Concerning the pending motions and amended complaint [Dkt. #40 & #41], Plaintiff desires for the trial court to do several things. First, reverse its ruling and deny the Schron and Sava 12(b)(6) motions [Dkt. #11 & #18] and deny Mariner's 12(b)(6) motion [Dkt. #21] since it has not been ruled upon. In the event the trial court considers the Mariner 12(b)(6) motion ruled upon by its Schron and Sava orders [Dkt. #38 & 39], then the trial court should reverse such ruling as to Mariner also – though Mariner is never mentioned in Dkt #38 or #39. Then deny the Schron 12(b)(2) motion [Dkt. # 10] and allow the case to proceed under existing scheduling order [Dkt. #37]. Second, to the extent the trial court chooses to stand by its ruling, Plaintiffs request the court to issue an order which properly disposes of Mariner's 12(b)(6) motion [Dkt. #21] and issue an order allowing the filing of **FIRST AMENDED COMPLAINT** [Dkt. 41], bring the new parties into the case, let them file their 12(b)(6) motions, the court will grant them, then Plaintiffs will file a notice of appeal bringing the whole case properly before the appeals court.

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the entire case to the United States Court of Appeals for the Fifth Circuit including but not limited to appealing the trial court's rulings contained in **ORDER** signed December 21, 2012 [Dkt. #38] and **FINAL JUDGMENT** signed December 21, 2012 [Dkt. #39] which claim to finally dispose of the case by granting two of three pending 12(b)(6) motions [Dkt. #11, #18 & #21]. Please note: though Docket #38 & #39 were signed on December 21, 2012, they were not served on the parties via electronic notification until Christmas eve, December 24, 2012. In support thereof, Gladys Robins would show the following in compliance with Fed. R. App. P. 3 (c):

1. **Party taking the appeal:**

The parties taking this appeal are all Plaintiffs Gladys Robins, Robert Charles Robin, Sandra Jean McGowan, Lucille Marie Brown and Dexter Leon Battle.

2. **Judgment, order or part thereof appealed:**

Plaintiffs appeal the **ORDER** signed December 21, 2012 [Dkt. #38], **FINAL JUDGMENT** signed December 21, 2012 [Dkt. #39] and all adverse rulings by the trial court made after December 21, 2012 concerning all of Plaintiffs' pending motions and filings including but not limited to **PLAINTIFF GLADY ROBINS' MOTION FOR RECONSIDERATION** [Dkt. #40] and **FIRST AMENDED COMPLAINT** [Dkt. #41] and any other motions or filings made by Plaintiffs after December 21, 2012.

3. **Court to which appeal is taken:**

This appeal is taken to the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

DOLLINGERLAW

/s/ e-signed by scot g. dollinger 7

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GLADYS ROBINS ET AL

CERTIFICATE OF SERVICE

Pursuant to and in conformity with Fed. R. Civ. P. 5(a) and Fed. R. Civ. P. 5(b) by signing below I hereby certify that on the 20TH day of January, 2013, I have served a copy of **PLAINTIFFS GLADYS ROBINS' ET AL'S NOTICE OF APPEAL** with the attached exhibits and orders (if any) as indicated below:

by U.S. first class mail postage prepaid [Fed. R. Civ. P. 5(b)(2)(B)]

by U.S. first class, certified mail, return receipt requested postage prepaid [Fed. R. Civ. P. 5(b)(2)(B)]

x by document transfer/e-filing

by handing it to the person [Fed. R. Civ. P. 5(b)(2)(A)(i)]

by leaving it at the person's office with a clerk or other person in charge, or if no one is in charge leaving it in a conspicuous place in the office [Fed. R. Civ. P. 5(b)(2)(A)(ii)]

by leaving it at the person's dwelling place house or usual place of abode with someone of suitable age and discretion residing there because the person has no office or the office is closed [Fed. R. Civ. P. 5(b)(2)(A)(iii)]

by leaving a copy with the clerk of the court because the person has no known address [Fed. R. Civ. P. 5(b)(2)(C)]

by delivering a copy by any other means consented to in writing by the person served [Fed. R. Civ. P. 5(b)(2)(D)]

to the following unrepresented parties (if any) and attorneys of record:

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